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D.R., Appellant)	
)	
and)	Docket No. 20-1570
)	Issued: April 14, 2021
DEPARTMENT OF HOMELAND SECURITY,)	
CUSTOMS & BORDER PATROL, Conroe, TX,)	
Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On August 31, 2020 appellant, through counsel, filed a timely appeal from a July 23, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

The issue is whether appellant has met his burden of proof to establish ratable hearing loss, for schedule award purposes.

On November 25, 2019 appellant, then a 56-year-old air interdiction agent, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss in both ears due

¹ 5 U.S.C. § 8101 *et seq.*

to factors of his federal employment, including noise from jet engines and firearms. He noted that he first became aware of his condition on August 13, 2019 and of its relation to his federal employment on August 20, 2019. Appellant did not stop work.

In a development letter dated December 10, 2019, OWCP informed appellant of the deficiencies of his claim and advised him of the type of factual and medical evidence necessary to establish his claim. It provided a questionnaire for his completion and requested that he submit a narrative medical report from his physician, which contained a detailed description of findings and diagnoses, explaining how his employment duties caused or aggravated his medical condition. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's exposure to noise due to factors of his federal employment, including comments from a knowledgeable supervisor regarding the accuracy of his statements. It afforded both parties 30 days to respond.

Appellant submitted a December 30, 2019 audiogram performed by Michael Doing, a medical assistant and audiology extern.

In a January 6, 2020 statement, appellant explained that he was exposed to noise levels of 93 to 160 decibels (dBs) from aircraft and during quarterly firearms qualifications over his 21 years of federal service. He indicated that, although he had been using hearing protection provided by the employing establishment, he still developed some hearing loss.

On February 4, 2020 OWCP referred appellant, the case record, along with a statement of accepted facts (SOAF) and an otologic evaluation questionnaire, to Dr. Paul W. Loeffler, a Board-certified otolaryngologist serving as a second opinion physician, regarding the nature, extent, and causal relationship of his hearing loss.

In his May 20, 2020 report, Dr. Loeffler reviewed the SOAF and completed the questionnaire. He opined that appellant sustained work-related bilateral sensorineural hearing loss and tinnitus. Dr. Loeffler recommended hearing aids. An updated audiogram dated May 20, 2020 revealed the following dB losses at 500, 1,000, 2,000, and 3,000 Hertz (Hz): 20, 20, 25, and 20, respectively, for the right ear and 15, 15, 15, and 25, respectively, for the left ear. Dr. Loeffler calculated zero percent hearing impairment on the left, zero percent hearing impairment on the right, and zero percent binaural hearing impairment. Using a tinnitus impairment chart, he determined that appellant had a tinnitus impairment rating of two percent, which corresponded with a description of a mild impairment where the tinnitus may be muted by environmental sounds and forgotten with activities. Dr. Loeffler then added two percent to the calculation for binaural hearing impairment of zero percent to find a total of two percent binaural hearing impairment. He diagnosed bilateral sensorineural hearing loss and tinnitus and attributed the conditions to noise exposures during appellant's federal civilian employment. Dr. Loeffler indicated that appellant reached maximum medical improvement (MMI) on May 20, 2020.

By decision dated June 23, 2020, OWCP accepted appellant's claim for bilateral sensorineural hearing loss and bilateral tinnitus due to his employment-related noise exposure.

On June 24, 2020 OWCP referred the medical records and SOAF to Dr. Jeffrey Israel, a Board-certified otolaryngologist serving as a district medical adviser (DMA), for calculation of appellant's percentage of hearing loss.

On July 1, 2020 Dr. Israel reviewed the medical evidence, including Dr. Loeffler's report, the December 2019 and May 20, 2020 audiograms, and the SOAF. He concluded that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*² (A.M.A., *Guides*), appellant had zero percent monaural hearing loss in each ear and zero percent binaural hearing loss. The DMA disagreed with Dr. Loeffler's two percent tinnitus rating and noted that a tinnitus award cannot be rendered when there is a zero percent binaural hearing loss. He recommended yearly audiograms, noise protection for appellant's ears, and hearing aids for both hearing loss. The DMA determined that appellant had reached MMI on May 20, 2020, the date of the latest audiogram in the records and used by Dr. Loeffler to determine the current hearing impairment.

By decision dated July 23, 2020, OWCP denied appellant's schedule award claim, finding that the evidence of record was insufficient to establish that his accepted hearing loss condition was severe enough to be considered ratable.

LEGAL PRECEDENT

The schedule award provisions of FECA³ and its implementing regulations⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The sixth edition of the A.M.A., *Guides*⁵ has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.⁶

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*. Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, the losses at each frequency are averaged.⁷ Then, the fence of 25 dBs is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBs result in no impairment in the ability to hear everyday speech

² A.M.A., *Guides* (6th ed. 2009).

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Supra* note 2.

⁶ *P.H.*, Docket No. 20-0633 (issued October 20, 2020); *V.M.*, Docket No. 18-1800 (issued April 23, 2019).

⁷ *Supra* note 2 at 250.

under everyday conditions.⁸ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁹ The binaural loss of hearing is determined by calculating the loss in each ear using the formula for monaural loss, the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.¹⁰ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish ratable hearing loss, for schedule award purposes.

OWCP properly referred appellant to Dr. Loeffler for a second opinion examination to evaluate his hearing loss. In his May 20, 2020 report, Dr. Loeffler noted appellant's audiogram findings and concluded that his binaural sensorineural hearing loss was due to his workplace noise exposures. He determined that appellant had zero percent monaural hearing loss in each ear and two percent binaural hearing loss for tinnitus.

On July 1, 2020 the DMA reviewed Dr. Loeffler's report and concurred that appellant had zero percent monaural hearing loss in each ear. Testing at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed losses of 20, 20, 25, and 20 dBs, respectively, for the right ear, and 15, 15, 15, and 45 dBs, respectively, for the left ear. The DMA totaled the dB losses to 85 on the right and 90 on the left. These values, when divided by four, resulted in an average hearing loss of 21.25 on the right and 22.5 on the left, which when reduced by the 25 dB fence, were reduced to zero. When multiplied by 1.5, the resulting monaural loss in each ear was zero percent. The DMA, therefore, found a total of zero percent binaural hearing loss.

The Board finds that the DMA properly concluded that appellant did not have permanent impairment of his hearing warranting a schedule award.¹² Although appellant has accepted employment-related hearing loss, it is not sufficiently severe to be ratable for schedule award purposes.¹³

The Board notes that, while Dr. Loeffler found two percent hearing loss due to tinnitus, the DMA properly explained that because appellant's hearing loss was not ratable, he was not entitled to a schedule award for tinnitus. The A.M.A., *Guides* provide that, if tinnitus interferes with activities of daily living (ADL's), including sleep, reading (and other tasks requiring concentration), enjoyment of quiet recreation and emotional well-being, up to five percent may be

⁸ *Id.*; *C.D.*, Docket No. 18-0251 (issued August 1, 2018).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *V.M.*, *supra* note 6.

¹² *B.E.*, Docket No. 18-1785 (issued April 1, 2019).

¹³ *W.T.*, Docket No. 17-1723 (issued March 20, 2018); *E.D.*, Docket No. 11-0174 (issued July 26, 2011).

added to a measurable binaural hearing loss.¹⁴ A schedule award for tinnitus, however, is not payable unless the medical evidence establishes that the condition caused or contributed to a ratable hearing loss.¹⁵ As such, the Board has held that, in the absence of ratable hearing loss, a schedule award for tinnitus is not appropriate.¹⁶ Accordingly, the Board finds that appellant is not entitled to a schedule award for tinnitus.¹⁷

Appellant also submitted a December 30, 2019 audiogram. However, this audiogram does not constitute probative medical evidence because it was not certified by a physician as being accurate. The Board has held that, if an audiogram is prepared by an audiologist, it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss.¹⁸

The Board finds that there is no current medical evidence of record supporting that appellant has ratable hearing loss under OWCP's standardized procedures for rating hearing loss.¹⁹

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish ratable hearing loss, for schedule award purposes.

¹⁴ *Id.* See also *Robert E. Cullison*, 55 ECAB 570 (2004).

¹⁵ *J.G.*, Docket No. 19-0891 (issued October 1, 2019).

¹⁶ *Id.* See also *D.G.*, Docket No. 16-1486 (issued December 16, 2016).

¹⁷ *G.G.*, Docket No. 18-0566 (issued October 2, 2018).

¹⁸ See *R.H.*, Docket No. 18-1721 (issued March 25, 2019).

¹⁹ *L.H.*, Docket No. 18-0696 (issued November 28, 2018).

ORDER

IT IS HEREBY ORDERED THAT the July 23, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 14, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board